IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13648 of 2005
With
SPECIAL CIVIL APPLICATION No. 9204 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUAJRAT STATE ROAD TRANSPORT CORPROATION-THR'LEGAL ADVISOR - Petitioner(s)

Versus

LILAVATI R.TRIVEDI - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Petitioner(s) : 1,
MRS YOGINI V PARIKH for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

1. Special Civil Application No.13648/2005 has been filed by the S.T.Corporation challenging the legality of an award dated 3rd December, 2003 passed by Labour Court, Ahmedabad. Special Civil Application No. 9204/2004 has been filed by the workman concerned challenging the very

same award in so far as the same is against the employee.

2. Lilavati R Trivedi was employed in the clerical cadre by the S.T.Corporation. Upon certain allegations of not maintaining the records correctly a charge sheet came to be issued against her on 23rd September, 1989. Upon completion of the inquiry she was dismissed from service by an order dated 20th November, 1989. She challenged her dismissal before the Labour Court. The Labour Court partially allowed the reference found that the dismissal is bad in law. However considering that she had already reached the age of superannuation on 20th September, 1998 in the operative portion the Labour Court provided that she will not be entitled to reinstatement or back wages but she will be paid her retiral benefits considering her service from the initial entry till 20th September, 1998. The corporation has challenged the award. Employee has also challenged non-granting of back wages provided for by the Labour Court.

3. Upon perusal of the charges against the employee it can be seen that the charges pertains to not maintaining the records accurately and making repeatedly mistakes. The S.T.Corporation examined two witnesses before the

Labour Court, one Shri Abdul Habia and Shri Mubia Sheikh. Both these witnesses stated in their cross-examination that they were not examined during the course of the inquiry. It can thus be seen that their version which was placed before the Labour Court was not part of the record of the inquiry proceedings. In that view of the matter the conclusion of the Labour Court that the charges were not proved calls for no interference. Even otherwise, I find that that there was no element of doubtful integrity or misappropriation of public funds attributed to the employee in the charge sheet. Dismissing her from service after nearly 32 years of service was, therefore, harsh and excessive. In the decision of **Kailash Nath Gupta Vs. Enquiry Officer, Allahabad Bank & Ors. reported in AIR 2003 SC 1377** the Hon'ble Supreme Court set aside the order of removal of a bank employee who was removed on the charges of procedural irregularities and when it was found that there was no evidence to show that he mis-appropriated money or had committed any fraud.

4. In the present case also there is no allegation of mis-appropriation of money or fraud against her. Dismissal was, therefore, not justified. The learned

advocate Mr. Dugli for the petitioner S.T.Corporation submitted that there were similar instances noticed by the employer and but for a dismissal she would have faced further departmental inquiries on similar irregularities. Considering the totality of facts and circumstances, therefore, while finding that the dismissal was unjustified it would be appropriate to provide that though the employee will not be entitled for any wages for the intervening period the date of dismissal till the age of superannuation, she will be entitled to all post retiral benefits considering her service as continuous for the entire period. If not paid already, such benefits shall be released expeditiously. Since the employee is being deprived of the entire amount of back wages, it is provided that the Corporation shall not proceed further with the inquiries which were dropped, since charges therein were also of procedural irregularities. In the result Special Civil Application No. 13648/05 is rejected. Rule is discharged. Special Civil Application No. 9204/04 disposed of in view of the above composite order. Rule is made absolute to the limited extent. No order as to costs.

(Akil Kureshi, J.)

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